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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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HERMAN BENARD, §  
§  
Petitioner, §  
§  
versus § CIVIL ACTION NO. 1:18-CV-410  
§  
§  
DIRECTOR, TDCJ-CID, §  
§  
Respondent. §

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner, Herman Benard, an inmate confined at the Eastham Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the petition as successive.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court finds petitioner's objections are without merit. Petitioner concedes he has already sought habeas corpus relief concerning this conviction and sentence. This Court is without jurisdiction to consider a successive habeas petition unless a three-

judge panel of the United States Court of Appeals for the Fifth Circuit has first granted the petitioner permission to file such a petition. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000) (per curiam); *see also Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003) (section 2254 petition).

## ORDER

Accordingly, the objections of the plaintiff are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A Final Judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED at Beaumont, Texas, this 15th day of November, 2018.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE